

### **REMARKS/ARGUMENTS**

The present communication responds to the Final Office Action dated April 18, 2006. In that Final Office Action, the Examiner rejected claims 23, 25 through 33 and 35 through 42.

The Applicants have herewith amended claims 23, 33, and 40. No new matter has been added by these amendments. In view of the amendments and the following remarks, the Applicants respectfully request reconsideration and allowance of the pending claims.

#### ***Examiner Interview***

Applicants appreciate the Examiner's time and suggestions provided in the Examiner interview conducted between Examiner Desai and Chris Hilberg. Applicants have amended the independent claims in order to define the present invention using geometric relationships to clarify the positioning of the lugs on the elongated sealing member.

#### ***Rejections Under 35 U.S.C. § 103(a)***

Claims 23, 25, 29 through 31, 33, 35 and 39 through 42 were rejected under 35 U.S.C. 103(a) over Japanese Patent No. 8-258851 (Patent '851) in view of U.S. Patent No. 3,141,221 Faulls, Jr. (hereinafter "Faulls").

Claims 26 through 28, 32 and 36 through 38 were rejected under 35 U.S.C. 103(a) over Japanese Patent No. 8-258851 (Patent '851) in view of U.S. Patent No. 3,141,221 Faulls, Jr. (hereinafter "Faulls") as applied to claims 23 and 33, and further in view of Vargas (US Published Patent Application 2003/0188510).

*Claims 23, 33 and 40 are Not Made Obvious by Patent '851 in view of Faulls Jr.*

The cited references do not teach or suggest the recitations of at least the independent claims for the following reasons. Independent claims 23, 33, and 40, as amended, each recite an elongated receiver portion having "two portions, a closed circumferential portion having a circumference of at least 180° and an opened circumferential portion coupled to said closed circumferential portion" and "the receiver portion further having lugs, each lug having a

proximal and distal end, each of said proximal end and distal end of said lugs arranged along a plane within said opened circumferential portion, the distal end of said lugs projecting generally outwardly from the opened circumferential portion and downwardly in the direction of the opening of the opened circumferential portion, the proximal end of one of said lugs provided at a location that is spaced apart from the opening and adjacent to said first ridge, the proximal end of another of said lugs provided at a location that is spaced apart from the opening and adjacent to said second ridge, and wherein said proximal end of each of said lugs comprises a connection point to the opened circumferential portion that forms an angle facing said opened circumferential portion that is less than  $180^\circ$ .”

In the Patent ‘851, knob sections 71 are arranged so that they extend towards and beyond a closed portion of the base 22. Therefore, Patent ‘851 does not teach or suggest lugs that are arranged along a plane within an opened circumferential portion, where the closed circumferential portion has a circumference of at least  $180^\circ$ .

In addition, knob sections 71 are connected to base 22 that forms an angle facing the opened portion of base 22 that is  $180^\circ$ . Therefore, Patent ‘851 does not teach or suggest lugs that have a connection point to the opened circumferential portion that forms an angle facing the opened circumferential portion that is less than  $180^\circ$ .

Faulls does not remedy the deficiencies of Patent ‘851 because stiffening beads 14a and 15a of Faulls are connected to legs 14 and 15, respectively, so that the connection point between the stiffening beads and the legs form an angle facing the opened circumferential portion that is  $180^\circ$  or greater. If Faulls is considered to have a connection point that is less than  $180^\circ$ , then stiffening beads 14a and 15a are provided as the distal end of legs, and therefore are not spaced apart from the opening. Therefore, Faulls fails to teach or suggest one or more of the aspects of the independent claims which include: that “the proximal end of one of said lugs provided at a location that is spaced apart from the opening and adjacent to said first ridge, the proximal end of another of said lugs provided at a location that is spaced apart from the opening and adjacent to said second ridge” and/or that the “proximal end of each of said lugs comprises a connection point to the opened circumferential portion that forms an angle facing said opened circumferential portion that is less than  $180^\circ$ .”

Furthermore, neither Patent '851 or Faulls provides any motivation to adapt the '851 apparatus to include lugs having the configuration as set forth in the independent claims. If anything, the asserted combination of references would lead to providing a clip apparatus described in Patent '851 that includes the beads 14a and 15a of Faulls. Moreover, there would be no motivation to combine the clip apparatus in Patent '851 with the closure described in Faulls. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *MPEP* § 2143.01. In summary, even if proper, which it is not, the asserted combination would not make the claimed invention obvious. Accordingly, the rejection under § 103 should be reconsidered and withdrawn.

Moreover, Vargas does not remedy the deficiencies of Patent '851 or Faulls. The bag sealing apparatus disclosed in Vargas does not teach or suggest positioning lugs along a plane within an opened circumferential portion, and therefore does not teach or suggest that “the proximal end of one of said lugs provided at a location that is spaced apart from the opening and adjacent to said first ridge, the proximal end of another of said lugs provided at a location that is spaced apart from the opening and adjacent to said second ridge” and/or that the “proximal end of each of said lugs comprises a connection point to the opened circumferential portion that forms an angle facing said opened circumferential portion that is less than 180°.”

*Applicants reassert the argument that Claims 27, 28, 37 and 38 are Not Made Obvious by Patent '851 in view of Faulls and in further view of Vargas*

Claims 27, 28, 37 and 38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Patent '851 in view of Faulls as applied to claims 23 and 33, and further in view of Vargas (US Published Patent Application 2003/0188510). The Applicants assert these claims are allowable as depending from allowable claims. The Applicants further assert that Patent '851 does not teach or suggest all of the claimed limitations of claims 27, 28, 37 and 38, and the rejection is traversed for at least the reasons previously provided.

Claims 27 recites “an opening that extends along a length of the sealing portion and a lanyard that extends through the opening,” and claim 37 recites “an opening that extends along a

length of the sealing portion and a lanyard formed into a loop that extends through the opening.” Patent ‘851 clearly fails to teach or suggest a lanyard extending through an opening in part 21. Indeed, Examiner acknowledges, “Japanese Patent does not disclose expressly that the lanyard extends through the opening of the sealing portion.” (Office Action, p. 5, para. 3). Instead, Examiner argues:

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the lanyard through the opening because Applicant has not disclosed that by extending the lanyard through the opening provides an advantage, is used for a particular purpose, or solves a stated problem. (Office Action, p. 5, para. 3).

The Applicants respectfully disagree. Not only does extending the lanyard through an opening in the sealing portion as claimed have various uses, at least some of those uses are explicitly disclosed:

A lanyard 46...may be used as a hanger or handle so that the bag...may be hand-carried, or retained on a supporting hook...when a bag is retained by the sealing apparatus.” (Applicants’ Spec., para. [0028]).

Claims 28 and 38 recite “the lanyard is further coupled to the receiver portion.” Again, Patent ‘851 clearly fails to teach or suggest this limitation. Examiner argues:

One of ordinary skill in the art, furthermore, would have expected Applicant’s invention to perform equally well with the lanyard (61) [of the Japanese Patent] attached to the sealing member and receiving portion as disclosed in the Japanese Patent or the claimed lanyard extends through the opening of the sealing portion because both lanyards perform the same function to prevent lost of either the receiving portion or sealing portion . . . (Office Action, p. 6, para. 6).

Again, the Applicants respectfully disagree. First, the “function” of the lanyard, as described above and in the Specification, may provide a hanger or handle. Configuring the lanyard to be coupled to the receiver portion, as recited in claims 28 and 38, avoids misplacing

the receiver portion; while this “coupling” is useful, it is not necessarily the exclusive “function” of the lanyard.

Second, the connector 61 in Patent ‘851 would clearly not “perform equally well” as the lanyard of the present invention. As described, the lanyard of the present invention may provide a functional hanger or handle. In contrast, connector 61 is configured such that if it were used to carry the sealing clip of the Japanese patent, connector 61 would tug at part 21, to which connector 61 is connected, thereby increasing the likelihood that part 21 and base 22 would become unintentionally disengaged. This shortcoming is not present in the claimed configuration of claims 27, 28, 37, and 38 because any tension exerted on that lanyard when used to carry the sealing apparatus of the present invention would be born on sealing portion through which the lanyard extends.

For at least these reasons, Patent ‘851 fails to teach or suggest the limitations of claims 27, 28, 37, and 38. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of pending claims 27, 28, 37, and 38.

Dependent Claims

Claims 25-32, 35-39, and 41-42 depend from their respective independent claims 23, 33, and 40, and are patentable over the art of record for at least the reasons set forth above.

**CONCLUSION**

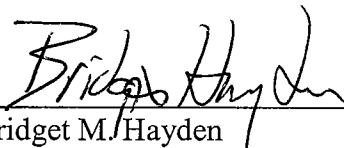
This application now stands in allowable form and reconsideration and allowance are respectfully requested.

Please charge to our Deposit Account No. 04-1420 the amount of \$510.00 to cover the petition fee for the 3-month extension of time. The Commissioner is also hereby authorized to charge any fee deficiency or credit any overpayment associated with this paper to Deposit Account No. 04-1420.

Respectfully submitted,

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